IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05-12-2006

Coram

The Honourable Mr.Justice P.D.DINAKARAN
and
The Honourable Mr.Justice P.P.S.JANARTHANA RAJA

T.C.(A)Nos.2661 and 2662 of 2006
and M.P.No.1 of 2006 in TC.2662/2006.

The Commissioner of Income-Tax,
Trichy ... Appellant in both T.Cs. / Respondent.

Vs.

Dr.D.Laxmanakumar ... Respondent in both T.Cs. / Appellant.

The above T.C.(Appeals) are preferred under Section 260A of the Income-Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal, Madras 'C' Bench, dated 25.11.2005 made in ITA Nos.433 and 434/Mds/2003 for the assessment years 1998-99 and 1999-2000 against the order of the Commissioner of Income Tax Appeals, Tiruchirappalli made in ITA.No.160 and 161/2001-02 dated 11.12.2002 against the Order of Income Tax Officer Ward I[1] Thanjavur in PA.No./GIR No.L-774/1[1] TNJ/1999-2000 dt. 30.3.2001 against order of Income Tax Officer Ward I [1] Thanjavur in PA.No/GIR No.L.774 1[1] TNJ/1998-1999 dated 30.3.2001.

For Appellant : Mr.J.Narayanaswamy

J U D G M E N T

(Judgment of the Court was made by P.D.DINAKARAN, J.)

The above tax case appeals are directed against the common order of the Income-tax Appellate Tribunal in ITA.Nos.433 and 434/Mds/2003, dated 25.11.2005.

2.1. The Revenue is the appellant. The assessment years involved are 1998-99 and 1999-2000. The assessee, who is a medical practitioner, constructed a nursing home during the period February 1996 to October 1998. On a survey conducted by the Income-tax department on 3.11.1998, it was found that the cost of construction as shown by the assessee at

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Rs.19,40,500/- has been underestimated and the assessing officer, based on the report of the Departmental Valuation Officer, estimated the cost of construction at Rs.37,31,906/- and accordingly, called upon the assessee to explain as to why the difference amount of Rs.17.92 lakhs should not be treated as unexplained investment. After a detailed enquiry, the assessing officer completed the assessment and brought to tax a sum of Rs.18 lakhs by treating it as unexplained investment.

2.2. Against the said order of assessment, the assessee preferred an appeal before the Commissioner of Income-tax (Appeals), who, by order dated 11.12.2002, reduced the cost of construction by Rs.5 lakhs. On further appeal by the assessee, the Income-tax Appellate Tribunal, placing reliance on the decision of the Apex Court in COMMISSIONER OF INCOME-TAX v. Dr.B.Venkata Rao [(2000) 243 I.T.R. 81], held that the cost of construction of the nursing home is entitled for depreciation on the ground that it is a plant.

3. Aggrieved by the said decision of the Tribunal, the Revenue has preferred the present appeal raising the following substantial question of law:

> " In the absence of any application of functional test being applied to a building, to determine whether it was constructed specifically to enable it to perform as a part of the plant when the Tribunal is justified in holding that the building which are nursing home even in the absence of any equipment being implanted in the building is a plant and would consequentially be entitled for depreciation ?"

4. Mr.J.Narayanaswamy, learned counsel appearing for the Revenue, fairly submits that the issue raised in the above question is covered against the Revenue by the decision of the Apex Court in COMMISSIONER OF INCOME-TAX v. Dr.B.Venkata RAO [(2000) 243 I.T.R. 81). The Apex Court, in the said decision, applying the functional test as held by the Allahabad High Court in TULSI (S.K.) AND SONS. v. COMMISSIONER OF INCOME-TAX [(1991) 187 I.T.R. 685], affirmed the view of the Karnataka High Court in the assessee's case reported in [(1993) 202 I.T.R. 303] and dismissed the appeal filed by the Revenue by holding as follows:-

> "... it was clear from the order of the Tribunal as also the assessment order that the assessee's nursing home was equipped to enable the sterlisation of surgical instruments and bandages to be carried on. It was reasonable to assume in the circumstances, particularly having regard to the Tribunal's order which stated that the sterlisation room covered about 250 sq.ft that the nursing home was also equipped with an operation theatre. In the circumstancess, the assessee was entitled to depreciation at 10 per cent, on the nursing home building on the ground that it was a "plant"."

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5. The Allahabad High Court in TULSI (S.K.) AND SONS. v. COMMISSIONER OF INCOME-TAX [(1991) 187 I.T.R. 685], cited supra, described the meaning of "plant" as follows:-

> ".. In order to find out whether a building or structure or a part thereof constitutes "plant", the functional test must be applied. If it is found that the building or structure constitutes an apparatus or a tool of the taxpayer by means of which the business activities are carried on, it would amount to "plant" but where the structure plays no part in the carrying on of those activities but merely constitutes a place within which they are carried on, the building cannot be regarded as a plant."

6. Admittedly, in the instant case, the assessing officer and the Commissioner as well as the Tribunal observed that the assessee, who is a medical practitioner, is running a nursing home. Hence, applying the ratio laid down by the Apex Court in COMMISSIONER OF INCOME-TAX v. Dr.B.Venkata RAO [(2000) 243 I.T.R. 81), referred supra, we hold that the cost of construction of the nursing home of the assessee is entitled for depreciation on the ground that it is a plant.

In view of the above, we uphold the order of the Tribunal and finding no substantial question of law, the appeals stand dismissed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

sra

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To

1.The Assistant Registrar,
  Income Tax Appellate Tribunal
  Rajaji Bhavan, Besant Nagar, Chennai 90.
2.The Secretary, Central Board
  of Direct Taxes, New Delhi.
3.The Commissioner of Income-
  Tax (Appeals), Trichy.
4.The Income-tax Officer,
  Ward-I(1), Thanjavur.
5. The Commissioner of Income Tax,
Tiruchirappalli.

+ 2 CCs to Mr.N.Murali Kumaran, Advocate SR NO 59902

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of 2006

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